

1  
2  
3  
4  
5  
6  
7 UNITED STATES DISTRICT COURT  
8 CENTRAL DISTRICT OF CALIFORNIA  
9 WESTERN DIVISION  
10

11 FRANK A. RUST, ) No. ED CV 06-00576-PA (VBK)  
12 )  
13 Petitioner, ) ORDER ACCEPTING FINDINGS AND  
14 ) RECOMMENDATIONS OF UNITED STATES  
15 v. ) MAGISTRATE JUDGE  
16 TIMOTHY E. BUSBY, )  
17 )  
18 Respondent. )  
19 \_\_\_\_\_ )  
20

21 Pursuant to 28 U.S.C. §636, the Court has reviewed the Petition  
22 for Writ of Habeas Corpus ("Petition"), the records and files herein,  
23 and the Second Final Report and Recommendation of the United States  
24 Magistrate Judge,  
25

26 //

27 //

28 //

//

//

//

//

//

1       **IT IS ORDERED** that: (1) the Court accepts the findings and  
 2 recommendations of the Magistrate Judge, and (2) the Court declines to  
 3 issue a Certificate of Appealability ("COA").<sup>1</sup>



4  
 5  
 6  
 7 DATED: August 13, 2011

PERCY ANDERSON  
 UNITED STATES DISTRICT JUDGE

8  
 9  
 10  
 11  
 12  
 13  
 14  
 15       <sup>1</sup> Under 28 U.S.C. §2253(c)(2), a Certificate of Appealability  
 16 may issue "only if the applicant has made a substantial showing of the  
 17 denial of a constitutional right." Here, the Court has adopted the  
 18 Magistrate Judge's findings and conclusions denying Petitioner's  
 19 Motion to Amend and denying the Petition as untimely. Thus, the  
 20 Court's determination of whether a Certificate of Appealability should  
 21 issue here is governed by the Supreme Court's decision in Slack v.  
 22 McDaniel, 529 U.S. 473, 120 S. Ct. 1595 (2000), where the Supreme  
 23 Court held that, "[w]hen the district court denies a habeas petition  
 24 on procedural grounds without reaching the prisoner's underlying  
 25 constitutional claim, a COA should issue when the prisoner shows, at  
 26 least, that jurists of reason would find it debatable whether the  
 27 petition states a valid claim of the denial of a constitutional right  
 28 and that jurists of reason would find it debatable whether the  
 district court was correct in its procedural ruling." 529 U.S. at  
 484. As the Supreme Court further explained:

"Section 2253 mandates that both showings be made before the  
 court of appeals may entertain the appeal. Each component  
 of the § 2253(c) showing is part of a threshold inquiry, and  
 a court may find that it can dispose of the application in  
 a fair and prompt manner if it proceeds first to resolve the  
 issue whose answer is more apparent from the record and  
 arguments." Id. at 485.

Here, the Court finds that Petitioner has failed to make the  
 requisite showing that "jurists of reason would find it debatable  
 whether the district court was correct in its procedural ruling."